



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: T&S Products, Inc.

File: B-261287.2

Date: August 21, 1995

### DECISION

T&S Products, Inc. initially protested the terms of invitation for bids (IFB) No. 2FYP-DW-950004-S, issued by the General Services Administration (GSA) for paper shipping sacks.<sup>1</sup> In this supplemental protest, T&S argues that United States Postal Service officials were biased in favor of the Sealed Air Corporation, and that this bias led the Postal officials to ask GSA to purchase a particular type of sack (*i.e.*, one cushioned with macerated paper and incorporating a peel seal) that only Sealed Air manufactures in large quantities.<sup>2</sup> T&S's supplemental allegation of bias is based on documents received by the company in response to a Freedom of Information Act (FOIA) request, which T&S claims support its contentions.

We dismiss the protest because it fails to establish a basis for challenging the agency's action.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988). Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Brown Assocs. Management Servs., Inc.--Recon., B-235906.3, Mar. 16, 1990, 90-1 CPD ¶ 299. To achieve this end, our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds of a protest, 4 C.F.R. § 21.1(c)(4) (1995), and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(e). These requirements

<sup>1</sup>In its earlier protest, T&S alleged that the requirement for a peel seal on the macerated paper shipping sacks exceeded the agency's minimum needs and was restrictive of competition. We denied that protest. T&S Prods., Inc., B-261287, Aug. 14, 1995, 95-2 CPD ¶ \_\_\_\_.

<sup>2</sup>Pursuant to an arrangement worked out between GSA and the Postal Service in 1993, local post offices may use GSA as a source of supply for certain packaging products, including shipping sacks, which are offered for sale to the general public under the Postal Service's retail sales program.

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contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Robert Wall Edge--Recon., 68 Comp. Gen. 352 (1989), 89-1 CPD ¶ 335.

Here, the support for the protester's contention is that the Postal Service permitted Sealed Air to respond to a letter submitted by T&S approximately one month after bids were opened. In this letter, T&S outlined perceived disadvantages of macerated paper shipping sacks (as compared with T&S's bubblewrap shipping sacks); in Sealed Air's response, the company attempted to rebut T&S's assertions.

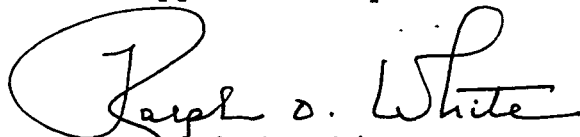
We fail to see how the act of permitting Sealed Air to respond to the T&S letter shows that Postal Service officials were biased in favor of Sealed Air when they identified their requirements for shipping sacks. Simply put, the evidence upon which T&S bases its supplemental protest is not sufficient to support a finding of agency bias. Instead, rather than permit only T&S to opine about the issue, the Postal Service officials solicited a response from their known supplier of the sacks. In our view, nothing in this course of action, without more, supports the protester's claim.

T&S also argued in its supplemental protest that since local post offices can acquire other than macerated paper/peel seal shipping sacks--and can acquire them from sources other than GSA--the shipping sacks solicited are not a "minimum need" of the government. We dismiss this ground of protest as untimely.

The protester alleges that it learned of this basis of protest when it received its FOIA response on July 14, 1995. The response included a copy of a memorandum written by the Postal Service's Manager of Retail Operations entitled "GSA as a Non-Mandatory Source for Retail Packaging Products." However, it is clear from the record that the protester was on notice of the non-mandatory nature of the arrangement between the Postal Service and GSA well prior to that date. For example, GSA stated in its June 9 report on T&S's earlier protest that "because this contract is non-mandatory and customer agencies have the option of purchasing shipping sacks on the open market, GSA too competes directly with commercial vendors who sell shipping sacks." In addition, in a declaration included as an exhibit to the aforementioned report, the Manager of Retail Operations for the Postal Service stated that "the USPS has taken the position that GSA is not a mandatory source of supply for the packaging products." Thus, we conclude that T&S could have raised this issue within 10 days of receiving the

agency report in response to its initial protest. See  
4 C.F.R. § 21.2(a)(2).

The supplemental protest is dismissed.

A handwritten signature in cursive script, reading "Ralph O. White". The signature is written in dark ink and is positioned above the printed name and title.

Ralph O. White  
Acting Assistant General Counsel